

**CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA**

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Mr. Mark Friedrichs
Office of Policy and International Affairs, PI-40
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Dear Mr. Friedrichs:

These comments concerning the U.S. Department of Energy's (DOE) interim final rule¹ for voluntary greenhouse gas (GHG) reporting are filed on behalf of the U.S. Chamber of Commerce, the world's largest business federation, representing more than three million businesses of every size, sector, and region. The Chamber serves as the principal voice of the American business community.

Many of the Chamber's members will be significantly affected by the DOE's reporting rule² because it contemplates creation of a regulatory structure that significantly impacts the operation and performance of virtually every business and industry operation in America that voluntarily reports GHG emissions to the environment. Chamber members who own, operate, or derive benefits from such operations are affected because the reporting and registering requirements of the interim final rule add to the cost of doing business.

As there has been extensive public commentary to DOE³ regarding the potential burdens of reporting and registering reductions, the Chamber will not comment further on the cost of the regulation. There is one concern, however, that has not been addressed by other parties or by DOE. Specifically, what are the implications under the Data Quality Act⁴ (DQA) of DOE publicly disseminating⁵ information voluntarily generated and submitted by the regulated community?

¹ Interim final rules: "Voluntary Greenhouse Gas Reporting," *Federal Register* 70 (March 25, 2005): 15164-15192.

² "Voluntary Greenhouse Gas Reporting," *Federal Register* 70 (March 25, 2005): 15164-15192.

³ For example, as presented at the April 26, 2005, DOE workshop on the guidelines (<http://www.pi.energy.gov/pdf/library/Transcript1605b.pdf>).

⁴ §515, Treasury and General Government Appropriations Act for Fiscal Year 2001; Public Law 106-554; 44 U.S.C. §3516, note.

RELEVANCE OF THE DATA QUALITY ISSUE MUST BE ADDRESSED

The DQA mandates that federal agencies ensure that information they publicly disseminate be maximized with regard to its quality, objectivity, utility, and integrity. Unfortunately, DOE's voluntary greenhouse gas reporting rule creates a regulatory structure that fails to address issues that will arise when third parties challenge the quality of publicly disseminated GHG emissions reduction data voluntarily submitted to DOE by business and industry stakeholders. Such challenges are allowed under the DQA and the Information Quality Guidelines (IQG)⁶ issued by the Office of Management and Budget (OMB).

Third party challenges impact business and industry operations because they will necessitate additional substantiation of the validity of the reported data. Conceivably, this may necessitate the revelation of confidential business information or trade secrets. Were this circumstance to arise, there would be reluctance among various business and industry stakeholders to take part in the voluntary reporting program for fear of such information getting into the hands of competitors and causing economic harm. The prospect of losing a competitive edge could also stimulate a decline in technological innovation—why engage in innovation only to lose it to a competitor? At a minimum, developing such supplemental information to substantiate the original data submittals adds to the cost of doing business.

In addition, and conceivably more problematic, the perceived “creditworthiness” of registered reductions will be called into question if, as a result of data quality challenges, the underlying data are viewed as unreliable. Should questions arise concerning the creditworthiness of registered emission reductions, the ability of submitting businesses and industries to subsequently use the registered GHG emissions reduction information in private sector enterprise—such as in voluntary emissions trading markets—could be diminished, perhaps substantially.

Although extensive public feedback to DOE⁷ documents numerous stakeholder concerns about reporting burdens, the chief concern of the Chamber—data quality challenges to voluntarily reported GHG emissions reduction data—has not been adequately addressed. This fact is clearly documented in the following

⁵ Note that DOE is **required** [emphasis added] to publicly disseminate such voluntarily submitted GHG emissions reduction information. The *Code of Federal Regulations* (10 CFR Part 300, §300.12(d)) states: “The Administrator of EIA will establish a **publicly accessible** [emphasis added] database composed of all reports that meet the definitional, measurement, calculation, and certification requirements of these [voluntary emissions reductions reporting] Guidelines....”

⁶ 67 FR 8452-8460 (February 22, 2002).

⁷ For example, as presented at the April 26, 2005, DOE workshop on the guidelines (<http://www.pi.energy.gov/pdf/library/Transcript1605b.pdf>).

excerpted discussion, which is taken from the transcript of the April 26, 2005, DOE workshop on the interim final rules for GHG reporting.⁸ The excerpted discussion leaves little doubt that DOE has failed to clarify how the DQA and IQG impact the practical implementation and utility of the GHG reporting guidelines.

This is a serious problem. If DOE does not adequately address this issue, there will be significant doubt among stakeholders and third party observers about the quality of the data submitted. It is this doubt that will lead to the data quality challenges that will increase the reporting and recordkeeping burdens imposed on business and industry.

DOE WORKSHOP EXCERPT CONFIRMS INATTENTION TO ISSUE OF CONCERN

Workshop Participant: *I don't know if this is directly related to any of that, but could someone comment just briefly on the possible interrelationship between these guidelines and the information quality guidelines?*

DOE Principal Deputy Assistant Secretary for Policy and International Affairs, Mr. Conover: *I can't. You mean the Data Quality Act?*

Participant: (Off mike)

Mr. Conover: *Phew. Well, gosh. We don't have -- Mike, can you pitch in on this?*

DOE Office of General Counsel Mr. Bowers: *I know what you're talking about.*
(Audience Laughter)

Mr. Conover: *I could do that. Mike knows what you're talking about, and as a consequence, he doesn't want to be on the record.*
(Audience Laughter)

Mr. Bowers: *I was aware that...*

Mr. Conover: *Mike.*

Mr. Bowers: *Oh, Mike Bowers with the General Counsel's Office.*

Mr. Brookman: *Get close, Mike, so we can hear you.*

Mr. Bowers: *I am familiar with the Data Quality Act. We have guidelines. There is probably the potential for application here, but beyond that, I'm really not prepared to respond.*

Mr. Conover: *I mean, I've looked at that issue in a different context, and I thought that the Data Quality Act went to reports being issued by the government.*

Mr. Bowers: *It's information disseminated by the government.*

Mr. Conover: *Right. Information disseminated by the government. So, I mean, we're receiving reports from you all. There's a requirement for certification. So we'll get back to you on that.*

Mr. Bowers: *Yes.*

⁸ The transcript of the meeting can be found at: <http://www.pi.energy.gov/pdf/library/Transcript1605b.pdf>.

Mr. Conover: *Before I say something as a lawyer that I shouldn't say.*

Mr. Bowers: *I have to say, I wasn't exactly prepared for that.*

Mr. Conover: *Yes.*

Mr. Brookman: *Okay. So maybe there is more to come on that.*

DOE'S UNCERTAINTY AS TO THE APPLICATION OF THE DQA MUST BE ADDRESSED BEFORE ACCEPTING SUBMISSIONS

The discussion contained in the above excerpt stands in strong contrast to DOE's remark published in its *Federal Register* notice concerning the interim final rule for voluntary GHG reporting, which states that:

DOE has reviewed today's [voluntary GHG reporting] guidelines and has concluded that [the interim final rule] is consistent with applicable policies in [OMB's IQG] guidelines.⁹

Obviously, there is a disconnect between DOE's assertion that the interim final rule is in conformance with the requirements of the DQA/IQG and the above discussion taken from the DOE emissions reporting workshop. It is therefore essential that DOE clarify the requirements of and the nexus between the DQA/IQG and the GHG reporting guidelines before accepting any data submissions; otherwise, DOE may be placing the regulated community in an awkward position with respect to a program in which it wants to participate.

Without such an explanation, GHG emissions reduction information reported to DOE will unavoidably be of varying quality, and as such, once disseminated, will be challengeable by third parties.¹⁰ The Chamber therefore requests that DOE clarify the nexus between the DQA/IQG and the rule for voluntary GHG reporting before business and industry stakeholders submit their data and it is subsequently attacked, wherein additional information is sought that could harm the submitters and threaten the disclosure of confidential intellectual property.

Sincerely,



William L. Kovacs

⁹ 67 FR 15181, III.F "Review Under the Treasury and General Government Appropriations Act, 2001."

¹⁰ The Data Quality Act specifically mandates that: *The guidelines under subsection (a) shall—(1) apply to the sharing by Federal agencies of, and access to, information disseminated by Federal agencies; and (2) require that each Federal agency to which the guidelines apply—(A) issue guidelines ensuring, and maximizing [emphasis added] the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency...* (Footnote 4, *Ibid*).